

SUBCHAPTER R : MANAGEMENT OF USED OR SCRAP TIRES

§§330.825-330.830

Effective September 5, 1999

§330.825. Fiscal Audits.

(a) Purpose. The purpose of this section is to establish procedures regarding the review of money expended from the WTRF as reimbursements and to assure payment from the WTRF occurs only for tires that are eligible for reimbursement as defined in this subchapter.

(b) Applicability. This subchapter applies to all requests for reimbursement from the WTRF. Those requesting reimbursement shall herein be considered a Reimbursement Responsible Party (RRP).

(c) Biennial fiscal audit. The commission biennially shall perform a fiscal audit of each RRP to ensure fiscal responsibility and accountability regarding reimbursements made under the WTRF. The RRP audited shall bear the cost of the fiscal audit.

(d) Duty of RRP.

(1) Each request for reimbursement by a RRP shall be supported by documentation as required in each applicable section of this subchapter. Each request for reimbursement shall be made on documents prescribed or approved by the executive director or, on a voluntary basis, shall apply by a removable storage medium stored in an industry standard file format acceptable to the commission.

(2) Each RRP who requests reimbursement from the WTRF shall do so for only those tires which are eligible for reimbursement in accordance with this subchapter.

(3) Each RRP shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years at the registered address of business available for review at the executive director's request.

(4) Each RRP notified by the executive director of a pending fiscal audit inspection shall retain all records for the period beginning three years from the date of notice until completion of the audit and authorization of the executive director to destroy documents that have been stored in excess of the three-year document retention requirement.

(e) Reimbursement defined. Payment by the executive director of a reimbursement claim means only that the claim is potentially subject to a post-reimbursement fiscal audit. By payment of reimbursement claims from the WTRF, the executive director makes no statement or admission that the reimbursements are for eligible tires as defined in this subchapter, or that the tires were managed in accordance with the rules of this subchapter.

(f) Dispute of audit findings. Upon determination by the fiscal audit team that an overpayment has occurred, the executive director may attempt to resolve the issues of dispute through alternative dispute

resolution (ADR) or informal meetings. The ADR procedures currently in use by the commission will be followed in all cases where audit findings are disputed. Failure by the RRP to provide requested back-up documentation during ADR or at the time of the informal meetings will result in the audit exceptions prevailing and implementation of §330.827 of this title (relating to Overpayment from the WTRF).

Adopted May 29, 1996

Effective July 1, 1996

§330.826. WTRF Fiscal Audits.

(a) The commission shall conduct biennial fiscal audits of reimbursements claimed and payments to achieve the purpose of this subchapter. Such fiscal audits may occur prior to or after claims for reimbursement have been paid. Such fiscal audits shall include, at a minimum, an investigation of the records supporting the requests for reimbursement as described in this subchapter. Such fiscal audits may include investigations of records from associated waste tire storage facilities, waste tire recycling facilities, waste tire energy recovery facilities and other facilities located in-state or out-of-state from which the RRP has received tires or to which the RRP delivered tires.

(b) The executive director shall submit to the RRP a preliminary fiscal audit report notifying the RRP of the findings of the fiscal audit not later than ninety days after the fiscal audit inspection.

(c) Upon the RRP's request for confidentiality as described in §330.875(b) of this title (relating to Confidentiality), documents submitted by RRP's to the executive director or copied by the executive director for the purpose of this section shall be considered confidential as described in §330.875(a) of this title.

Adopted May 29, 1996

Effective July 1, 1996

§330.827. Overpayment from the WTRF.

(a) If the executive director conducts a fiscal audit or investigation and concludes that reimbursement of a claim(s) was for an amount which was not justified, a notice of overpayment shall be sent via certified mail, return receipt requested to the RRP identifying the amount overpaid from the WTRF.

(b) Within 30 days of the date of receipt of a notice of overpayment, the RRP shall either submit a check returning the amount of the overpayment to the executive director or shall file a petition with the commission contesting the executive director's conclusion.

(c) All checks rendered to return overpayments shall be made to "The State of Texas - Waste Tire Recycling Fund", and mailed to the Chief Fiscal Officer, Texas Natural Resource and Conservation Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711-3087 with the notation "WTRF Waste Tire Facility or Energy Recovery Facility No. _____, overpayment return."

(d) If, after notice and opportunity for hearing, the commission determines that there was an overpayment, the commission may order the RRP to return the overpayment. The RRP ordered to return the

overpayment may also be required, at the commission's discretion, to reimburse the commission for all reasonable hearing costs, including the costs of preparation.

(e) Upon notification of any commission hearing or court appeal to resolve overpayment disputes, all records reviewed for the determination of overpayment shall be retained for a minimum of three years and/or until the hearing decision is issued and/or the RRP is compliant with all decisions or orders.

(f) The executive director may seek an order from the commission to compel cooperation with a fiscal audit or investigation when deemed necessary to achieve the purposes of this subchapter.

(g) A RRP that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration.

(h) The information concerning the status of a fiscal audit, the findings associated with the fiscal audit and/or the preliminary fiscal audit report will not be made public until the audit is completely finalized unless otherwise determined by the commission or the executive director, or if the executive director receives a request for disclosure made under the Freedom of Information Act.

Adopted May 29, 1996

Effective July 1, 1996

§330.828. WTRF Program Reviews, Applicability and Responsibility.

(a) Purpose. The purpose of this section is to establish procedures regarding the review of records required of any person involved in the generation, transportation, processing, storage, burning, or recycling of scrap tires or shredded tire pieces to provide the most effective protection to the environment for the protection of public health and safety.

(b) Applicability. This subchapter applies to any person involved in the generation, transportation, processing, storage, burning, or recycling of scrap tires or shredded tire pieces.

(c) Responsibility. Each entity that generates, transports, processes, stores, burns, or recycles scrap tires or shredded tire pieces shall ensure that all WTRF activities are in compliance with all applicable sections of this subchapter and shall maintain records which document the WTRF activities as described in this subchapter.

(d) Cooperation. Each entity shall cooperate fully with any records review or investigation by the executive director to verify the proper management of scrap tires or shredded tire pieces.

(e) Records. Each entity shall maintain originals of all records required by applicable subsections of this subchapter for a minimum of three years.

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Effective July 1, 1996

§330.829. WTRF Program Reviews.

(a) The executive director's staff shall conduct a sufficient number of program reviews of required records to achieve the purposes of this subchapter. Such reviews may occur prior to or after any claims for reimbursement have been paid. Such reviews may include an investigation of the records documenting the generation, transportation, processing, storage, burning, and recycling of scrap tires or shredded tire pieces. Such reviews may include investigations of associated waste tire storage facilities, waste tire recyclers, waste tire energy recovery facilities and facilities, located in-state or out-of-state, from which the party has received tires or to which the party delivered tires.

(b) Upon an entity request for confidentiality as described in §330.875(b) of this title (relating to Confidentiality), documents submitted by that entity to the executive director or copied by the executive director for the purpose of this subchapter shall be considered confidential as described in §330.875(a) of this title.

(c) The executive director may seek an order from the commission to compel cooperation with a program review or investigation when deemed necessary to achieve the purposes of this subchapter.

(d) Upon notification of any hearing or court appeal to resolve records disputes, all records reviewed shall be retained at a minimum of three years and/or until hearing decision is issued, and/or compliance with all decisions or orders is achieved.

Adopted May 29, 1996

Effective July 1, 1996

§330.830. Penalties for Records Violations.

An entity that violates the applicable sections of this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration.

Adopted May 29, 1996

Effective July 1, 1996